

Critical Analysis of Pure Legal Theory in Contemporary Legal Development

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Abstract: This study aims to examine and analyze the Pure Theory of Law developed by Hans Kelsen, focusing on both its strengths and weaknesses. Additionally, it assesses the extent to which this theory remains relevant and applicable in the context of contemporary law. The research employs a normative method with a conceptual approach to gain an in-depth understanding of the fundamental concepts within the Pure Theory of Law. This study is based on secondary data sourced from primary, secondary, and tertiary legal materials obtained through literature reviews and documentation. Data analysis is conducted using descriptive qualitative analysis. The findings indicate that Kelsen's theory provides a crucial foundation for the legal discipline, emphasizing that law should be understood as an autonomous normative system, independent of moral, social, and political values. However, in the face of ongoing social dynamics, such as globalization, digital technological advancements, and environmental crises, the Pure Theory of Law faces significant challenges due to its rigid and limited capacity to address the complexity of cross-border issues. While this theory remains vital as a basis for ensuring legal objectivity, its inability to accommodate social dynamics suggests that law requires a more flexible and adaptive approach.

Keywords: analysis, contemporary, pure theory of law.

1. Introduction

The theory of pure law, as pioneered by Hans Kelsen, constitutes a seminal contribution to the legal philosophy sector during the 20th century. This theoretical framework has served as a foundational principle in the development of contemporary legal thought.¹ Under the prevailing theory,

¹ I Nyoman Putu Budiarta Atmadja, I Dewa Gede, "Teori-Teori Hukum," *Setara Press*, 2018, 233.

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Kelsen's objective was aimed for distinguishing legal system from various extrinsic elements, including politics, ethics, religion, and social norms. This approach aimed to facilitate the comprehension of the legal system as an independent system of norms. Kelsen's argument posits that the understanding of law should be disassociated from its moral, social, or political dimensions. It is posited that the legal system should possess an autonomous and independent character. Consequently, it must be analyzed in isolation from extraneous values and norms that originate from outside the legal system itself.

One of the fundamental tenets of Kelsen's theory of pure law posits that the legal system is structured into a hierarchical order of norms, wherein the validity of a lower norm is contingent upon the validity of a higher-level norm. It is evident that within the aforementioned hierarchical structure, a *Grundnorm* exists as the foundational norm that provides the system's legal foundation. *Grundnorm* is defined as a norm that is not derived from other norms, but it constitutes fundamental assumption which is a basis for entire legal system.² Within the confines of this framework, the concept of law is regarded as a self-contained and rational system, wherein the legitimacy of each individual norm is derived from its relationship with overarching norm, thereby engendering a coherent and consistent structure.

Kelsen emphasized the necessity of objective legal analysis and the importance of focusing on the concept of 'existing' in law. Those emphasizing are an opposite to 'ought' (what should be) in moral or political contexts.³ It is imperative to comprehend the legal principles that underpin the structure, rather than being influenced by subjective perceptions of justice or ethics. The objective of this theoretical framework is for providing a scientific and objective analysis of legal issues, free from emotional, ethical,

² Fais Yonas Bo'a, "Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional," *Jurnal Kontitusi* 15, no. 1 (2018): 28–49, <https://doi.org/10.57235/jerumi.v2i1.2007>.

³ E. Fernando M. Manullang, "Subjek Hukum Menurut Hans Kelsen Dan Teori Tradisional : Antara Manipulasi Dan Fiksi," *Jurnal Hukum Dan Peradilan* 10, no. 1 (April 13, 2021): 139, <https://doi.org/10.25216/jhp.10.1.2021.139-154>.

or political influences which often influence the interpretation of legal principles.

Nonetheless, as time progresses and the intricacy of contemporary legal issues increasing the relevance and efficiency of Hans Kelsen's theory of pure law are being challenged. In an increasingly interconnected world, there is a growing debate within the legal community regarding the adequacy of legal approaches that emphasise autonomy in legal matters from a moral and social perspective. These approaches are being questioned in terms of their ability to effectively handling he increasingly complex and dynamic legal phenomena that we are witnessing in the modern era.

Globalization, as one of the predominant forces that has transformed the global landscape, has exerted a substantial impact on legal systems across various nations. In the contemporary era of globalisation, the boundaries that traditionally delineated nation-states have become increasingly indistinct, while international interactions and global organisations have undergone a real increasing intensity. This often forces local norms to be adjusted, and sometimes changed, to align with ever-expanding international regulations and conventions. For instance, the prevailing principles of international public law, human rights law, and global environmental law stipulate that states are obliged for adhering the internationally agreed-upon standards of law. In this particular context, the relevance of the theory of pure law, which emphasizes a system of law that is self-contained and unaffected by external influences, and appears to be diminished. This happened since the national legal system now is increasingly influenced by international and supranational legal systems, resulting in a reciprocal relationship.⁴

In addition to the phenomenon of globalisation, the emergence of novel phenomena such as cyber law, meteorological law, and social justice has become increasingly evident, thereby further demonstrating the limitations of the theory of pure law. In the contemporary context of rapidly evolving cyberlaw, the advent of digital space as a novel domain for social and

⁴ Atmadja, I Dewa Gede, "Teori-Teori Hukum."

economic interaction has necessitated a regulatory framework that is equally dynamic and adaptable. The field of cyber law encompasses a wide range of issues, including privacy, data protection, cybercrime, and intellectual property rights in the digital age. In addressing these issues, it is essential to employ legal frameworks that not only adhere for existing norms but also demonstrate the capacity to respond promptly for the evolving digital landscape. In this context, the concept of "*hukum*" cannot be comprehended as a mere series of isolated norms, but rather, it must demonstrate a capacity for responsiveness and integration to ensure justice and safety in digital era.

The existing issue is rendered all become more complex by the fact that a significant number of contemporary legal norms that are rooted in a multifaceted social reality that cannot be disassociated from the contexts of culture, economics, and politics. In other words, the pure art form is confronted with the challenge of comprehending and delineating phenomena that deviate from the stringent normative principles. For instance, how the principles of justice can be applied equally within the context of customary law, which is characterised by its distinct structure and values? In what manner might one adapt swiftly to a state of scientific uncertainty that is yet to be fully delineated?

In this context, it is imperative to undertake a critical analysis of the theory of pure law, primarily to comprehend its limitations and the relevance of the theory in addressing increasingly complex legal issues. It is imperative that the theoretical framework, which seeks to differentiate between legal principles and social reality, is subjected to rigorous scrutiny, particularly in light of the rapid social, economic, and political developments witnessed in recent decades.

The observations of Yanuar Harry Assadyra and Glandis Aullia Putri Tarto corroborate this assertion. In her study, Muthia Shafa Helvira examines the theory of natural law in contemporary legal thought.⁵ The study aims to

⁵ Yanuar Harry Assadyra, Glandis Aullia Putri Tarto, and Muthia Shafa Helvira, "Analisis Kritis Terhadap Teori Hukum Naturalis Dalam Ilmu Hukum Kontemporer," *Das Sollen: Jurnal Kajian*

provide a comprehensive analysis of the theory of natural law. The present study does not delve into the theoretical underpinnings of jurisprudence in any profound manner, thereby rendering it a subject of novelty or innovation within the purview of this investigation. In addition, Nike Fitriani's research paper, entitled '*Pengaruh The Pure Theory of Law dalam Perkembangan Hukum Positivisme di Indonesia*'⁶, explores the influence of the theory of pure law in Indonesia. Nevertheless, the study does not address the weaknesses and strengths of the pure legal theory.

The objective of this study is to comprehensively examine and analyze the strengths and weaknesses of the theory of pure law that developed by Hans Kelsen. In the contemporary legal landscape, which characterised by increasing complexity, this study aims to assess the continued relevance and practicality of the theory as mentioned above in addressing emerging challenges, including cyber law, international law, and social justice. The subsequent phase of this study will entail a thorough exploration of how ideal legal norms can be adapted to more accurately reflect prevailing social realities.

2. Methods

This study employs a normative research method, utilising a conceptual approach to comprehensively explore the fundamental concepts of the pure legal theory, including fundamental norms (*Grundnorm*) and the idea of law as a self-contained normative system. The utilisation of a historical approach is employed to investigate the progression of the theoretical framework of the branch of jurisprudence from one historical period to another, whilst concomitantly ascertaining the relevance of this theoretical framework in the context of contemporary jurisprudence.

Kontemporer Hukum Dan Masyarakat 2, no. 1 (2024): 1–18, <https://journal.forikami.com/index.php/dassollen/article/view/555>.

⁶ Nike Fitriani and Universitas Pasundan, "Pengaruh The Pure Theory Of Law Dalam Perkembangan Hukum Positivisme Di Indonesia," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 1 (2023): 1–15, <https://journal.forikami.com/index.php/dassollen/article/view/565>.

The present study utilised secondary data, which was sourced from the following primary, secondary and tertiary legal sources: The present study has been undertaken with the objective of collating data. To this end, a comprehensive review of relevant documentation and literature has been conducted, to undertake a systematic analysis of the relevant documents and literature.

Subsequently, the data obtained will be analyzed using the interpretive method of the legal sciences to understand how legal norms interact with Kelsen's theory, and whether there is a need to revise this theory in order to make it relevant to the current global challenges. The analysis will also encompass the systematics of legal principles, with a view to organising the various legal doctrines relevant to contemporary phenomena, thereby providing a comprehensive and systematic overview.

3. Results and Discussion

3.1. History and development of hydrostatic theory

The Pure Theory of Law (*Reine Rechtslehre*) was introduced by Hans Kelsen, an Austrian legal scholar and philosopher, at the beginning of the 20th century.⁷ This theory was first systematically presented in Kelsen's work, *Hauptprobleme der Staatsrechtslehre* (1911), and later in his major work, *Reine Rechtslehre* (1934). Initially, the theory emerged as a response to traditional legal positivism, which was still influenced by political, moral, and religious factors. Influenced by the logical positivism movement, Kelsen sought to separate law from all external elements, to make it more scientific and objective.⁸

The Pure Theory of Law emerged amid an intellectual climate influenced by Kantian philosophy and the developing normative theory of the time. Immanuel Kant's ideas influenced Kelsen's thinking, particularly his view

⁷ Atmadja, I Dewa Gede, "Teori-Teori Hukum."

⁸ M. Manullang, "Subjek Hukum Menurut Hans Kelsen Dan Teori Tradisional : Antara Manipulasi Dan Fiksi."

of law as a rational system of norms that is separate from empirical reality.⁹ From the outset, Kelsen intended to create a theory of law that was not influenced by ethical, political, or social views, thereby allowing law to be studied as an autonomous science.¹⁰ It is here that the term 'pure' in Pure Theory of Law finds its meaning, namely law as an object that must be analyzed in its own right, without the intervention of external values.

The Pure Theory of Law is based on the concept that law is a hierarchical system of norms, where each legal norm derives its validity from a higher norm.¹¹ At the top of this hierarchy of norms is what Kelsen calls the *Grundnorm*, or fundamental norm, which is the ultimate source of legitimacy for the entire legal system. The *Grundnorm* is a norm that cannot be tested by other norms, but is accepted as a fundamental assumption that governs the validity of the norms below it. According to Kelsen, the legal system must be analyzed from this normative perspective, rather than from an empirical perspective such as legal sociology.

Kelsen also introduced the important concept of the dualism between '*sein*' and '*sollen*', or reality (what happens) and norm (what should happen). According to Kelsen, law is not a representation of social reality or facts, but a normative construct that determines what should happen in certain situations.¹² In this sense, law must be separated from social reality and morality, so that legal analysis focuses only on the normative system, not on the social, political, or moral conditions in society.

⁹ FX. Adji Samekto, "Menelusuri Akar Pemikiran Hans Kelsen Tentang Stufenbeuthetheorie Dalam Pendekatan Normatif-Filosofis," *Jurnal Hukum Progresif* 7, no. 1 (2019): 1–19, <https://doi.org/10.14710/hp.7.1.1-19>.

¹⁰ Putera Astomo, "Perbandingan Pemikiran Hans Kelsen Tentang Hukum Dengan Gagasan Satjipto Rahardjo Tentang Hukum Progresif Berbasis Teori Hukum," *Yustisia* 90 (2014): 5–14, <https://jurnal.uns.ac.id/yustisia/article/download/28720/20092>.

¹¹ Imam Sujono, "Perkembangan Teori Hukum Murni Di Indonesia" (universitas bhayangkara, 2019), <https://doi.org/10.5281/zenodo.3385176>.

¹² Astomo, "Perbandingan Pemikiran Hans Kelsen Tentang Hukum Dengan Gagasan Satjipto Rahardjo Tentang Hukum Progresif Berbasis Teori Hukum."

Following Hans Kelsen's introduction, Pure Legal Theory gained widespread recognition among legal academics, particularly in Europe.¹³ By the mid-twentieth century, it had become one of the dominant legal approaches, particularly in countries that adopted the civil law tradition, such as Austria, Germany, and other European countries. One of the main reasons for the popularity of this theory is its systematic and rational approach to law, which offers a more scientific alternative to previous legal approaches that were often influenced by political, ethical, or social factors. In Austria, Germany, and other countries that adhere to the tradition of legal positivism, Pure Legal Theory is considered to be in line with the need to organise law in a rational and objective manner, particularly in the context of formulating a structured and hierarchical legal system.

In historical context, the acceptance of this theory coincided with Europe's challenges, such as the collapse of the Austro-Hungarian Empire and the social upheaval caused by the First World War. Amidst this instability, Kelsen's approach, which emphasised the autonomy of law from external influences, was appealing because it was considered capable of providing normative stability amidst political and social chaos. In Germany, the influence of Pure Legal Theory was also evident in the development of a more organised and rule-based legal system, which was seen as providing a foundation for the establishment of a strong *Rechtsstaat*.¹⁴

However, despite receiving widespread recognition, Pure Legal Theory has been subject to criticism since its inception. Many critics argue that the rigid separation between law and morality proposed by Kelsen can cause problems in the application of law in the real world. The main critics of this theory come from the fields of legal sociology and legal philosophy, rejecting the idea that law can be completely separated from social, moral, or political reality. One important criticism comes from the sociological legal school, which argues that law not only functions as a set of norms that regulate human behaviour, but also must be viewed as a reflection of societal values.

¹³ Atmadja, I Dewa Gede, "Teori-Teori Hukum."

¹⁴ Mukhidin, "Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterakan Rakyat," *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 267–286.

Eugen Ehrlich, for example, argued that 'living law' (*hukum hidup*) that operates within a society is often more significant than the formal norms set out in legislation or court decisions.¹⁵ According to this view, law cannot be completely separated from the evolving social dynamics of a society.

One of the main criticisms of Pure Legal Theory is it ignores the social and political aspects of law.¹⁶ Critics argue that law cannot be fully separated from the social reality in which it operates. Sociologists of law such as Eugen Ehrlich and Roscoe Pound argued that law should be understood in the context of its function in society and cannot be separated from social conditions and values.¹⁷ According to this view, law cannot be understood merely as a closed normative system, but rather as a social phenomenon influenced by the needs and expectations of society.

During the second half of the 20th century, international developments and social changes also began to challenge the relevance of Pure Legal Theory. Globalisation, changes in the world order, and the increasing complexity of international law made Kelsen's approach, which emphasised the autonomy of law from external influences, increasingly difficult to defend. International law, in particular, often involves political, ethical, and value considerations that directly influence the formation and interpretation of law. In this context, the boundaries between law and politics become increasingly blurred, making a "pure" approach to law inadequate.

Nevertheless, the Pure Theory of Law remains highly relevant, particularly in providing a systematic and logical framework for legal analysis. Despite criticism of its limitations in addressing social and moral issues, many modern legal experts continue to utilize the fundamental concepts offered by Hans Kelsen to understand the structure of law better. In this context,

¹⁵ Tim Murphy, "Living Law , Normative Pluralism , and Analytic Jurisprudence," *Jurisprudence* 3, no. 1 (2012): 177–210, <https://ssrn.com/abstract=2146667>.

¹⁶ Ramlani Lina Sinaulan, *Teori Ilmu Hukum*, ed. Abdul Rahmat and Yuhelson (Yogyakarta: Zahir Publishing, 2020).

¹⁷ Dominikus Rato, Fendy Setyawan, and koko roby Yahya, "Aliran Hukum Sociological Jurisprudence Dalam Perseptif Filsafat Hukum," *Jurnal Insan Pendidikan Dan Sosial Humaniora* 1, no. 1 (2023): 45–60, <https://doi.org/10.59581/jipsoshum-widyakarya.v1i1.76>.

one of the most significant contributions of Pure Legal Theory is its ability to explain the hierarchical relationship within the legal system, where every legal norm derives its validity from a higher norm, ultimately leading to the *Grundnorm* as the basic norm.¹⁸ This approach facilitates the analysis of relationships between norms within complex legal systems, particularly in the context of constitutional law. In constitutional law cases, for example, Kelsen's theory helps explain how constitutional norms become the source of legitimacy for the rules of law below them, allowing the legal system to be understood as a coherent whole.

However, the biggest challenge for Pure Legal Theory in the contemporary era is to adapt to the realities of globalisation and more complex legal phenomena, such as cyber law, climate change, and human rights. This theory, originally designed to separate law from external influences, appears inadequate in addressing issues involving multiple social, political, and moral dimensions that cannot be overlooked. In the context of international law, for example, global justice issues, climate change, and human rights demand a more flexible and integrative legal approach, one that can accommodate values beyond traditional legal norms.

3.2. Weaknesses and Advantages of Pure Legal Theory (*Grundnorm*)

The Pure Law Theory (*Grundnorm*) has several advantages that make it one of the most influential legal approaches in the history of modern legal thought. One of the primary advantages of this theory is its capacity to provide objectivity in legal analysis.¹⁹ Hans Kelsen, the founder of this theory, seeks to separate law from elements of morality, politics, and social values so that law can be studied scientifically and systematically, regardless of subjective factors. This approach enables law to operate within a more transparent and more measurable framework, distancing it from ideological influences or values that can often blur the distinction between what is legal and what is moral. In this context, law is viewed as an autonomous system

¹⁸ E Fernando M Manullang, "Mempertanyakan Pancasila Sebagai Grundnorm : Suatu," *Jurnal Hukum Dan Pembangunan* 50, no. 2 (2020): 284–301, <https://doi.org/10.21143/jhp.vol50.no2.2584>.

¹⁹ Sinaulan, *Teori Ilmu Hukum*.

of norms that can be identified and analyzed based on its formal validity, rather than on external values.

In addition, one of the important contributions of Pure Legal Theory is its ability to create structural clarity through the concept of a hierarchy of norms.²⁰ In this system, each legal norm derives its validity from the norm at the next higher level, with the *Grundnorm*, or basic norm, at the top providing legitimacy for the entire legal system. This hierarchy of norms creates coherence within the legal system and ensures that every legal rule has a clear place within the overall structure. This hierarchical concept is critical in civil law systems, where legal norms are organised systematically and structured. With *Grundnorm*, Kelsen provides a solid foundation for understanding how law is built on a stable basis and how legal norms are logically and consistently related to one another. This system helps to ensure that the law operates consistently without internal contradictions, guiding lawmakers and law enforcers in interpreting existing rules.

The Pure Theory of Law is highly relevant in the study of international law.²¹ In an international system without central authority, the concept of *Grundnorm* helps to explain the legitimacy of international law and how it can have binding power despite the absence of a supranational authority to enforce it. Kelsen argues that, similar to national law, international law should be understood as an autonomous normative system, where the validity of international legal norms derives from norms higher in the international hierarchy. This is highly relevant in the context of globalisation, where international law is increasingly important in regulating relations between states, protecting human rights, and governing trade and the environment. In this regard, Pure Legal Theory provides a theoretical basis for understanding international law as an independent system, free from the political interests of sovereign states, and helps to maintain the integrity of international law amidst the complex dynamics of global politics.

²⁰ Paryadi, "Maqashid Syariah : Definisi Dan Pendapat Para Ulama," *Cross-Border* 4, no. 2 (2021): 201–16, <https://journal.iaisambas.ac.id/index.php/Cross-Border/article/view/742>.

²¹ Sinaulan, *Teori Ilmu Hukum*.

While the *Grundnorm* Theory of Pure Law makes an important contribution to legal thinking, it is not free from a number of significant weaknesses. One of the main weaknesses is the overly rigid separation of law from morality, which is often unrealistic in everyday practice. Kelsen emphasised that law must be separated from moral, political and social values in order to be understood objectively. However, in reality, many legal rules are inherently linked to moral values, as seen in issues of human rights, equality and social justice. For example, legal principles on the prohibition of torture, the right to life, and equality before the law are all rooted in universal moral values. In these cases, it is difficult to ignore the moral dimension in the application of law, as morality is often the main foundation in determining what is just and right in the legal system. Therefore, the absolute separation between law and morality promoted by Pure Law Theory is often seen as impractical in the complex modern legal context.

While the *Grundnorm* Theory of Pure Law makes an important contribution to legal thinking, it is not free from a number of significant weaknesses. One of the main weaknesses is the overly rigid separation of law from morality, which is often unrealistic in daily practice. Kelsen emphasised that law must be separated from moral, political and social values in order to be understood objectively. However, in reality, many legal rules are inherently linked to moral values, as seen in issues of human rights, equality and social justice. For example, legal principles on the prohibition of torture, the right to life, and equality before the law are all rooted in universal moral values. In these cases, it is difficult to ignore the moral dimension in the application of law, as morality is often the main foundation in determining what is just and right in the legal system. Therefore, the absolute separation between law and morality promoted by Pure Law Theory is often seen as impractical in the complex modern legal context.

Another weakness of this theory is its inability to explain changes in legal norms, especially in the context of revolutions, regime changes, or other major political transitions. Pure Law Theory assumes the existence of a

Grundnorm that serves as the basis of legitimacy for the entire legal system.²² However, in situations where such a basic norm changes. For example, in a political revolution or transition from an authoritarian system to a democracy. The theory struggles to explain how these changes occur and how a new basic norm can suddenly replace the old one. In revolutions, the legitimacy of laws often shifts rapidly, and the new laws that are formed usually cannot be explained through Kelsen's hierarchy of norms framework. A clear example of this is when the former Eastern bloc countries underwent a transition from communism to liberal democracy, where their laws and constitutions changed radically in a relatively short period of time, and there was no clear *Grundnorm* that could explain the legitimacy of the transition within the framework of Pure Legal Theory.

Overall, although Pure Legal Theory has contributed greatly to the development of legal thought, especially in terms of objectivity and systematic analysis, its limitations in accommodating moral, political, and social aspects make it less relevant in the contemporary legal context.²³ Modern laws are not only expected to be formally valid, but also fair and responsive to the increasingly complex dynamics of society due to globalisation, technological advances, and increased awareness of human rights. New challenges such as social justice, climate change, and digital rights require a more flexible and holistic approach to law, capable of integrating normative elements with social and moral realities. Pure Legal Theory, with its rigid separation of law and morality, tends to fail to address issues that require a more integrative and contextualised response, making it less effective in addressing the demands of substantive justice in the modern era.²⁴ In this situation, a legal theory is needed that not only focuses on normative validity, but also considers how

²² Firman Freaddy Busroh and Fatria Khairo, *Teori Hukum Kontemporer* (badung, bali: infes media, 2024).

²³ Islamiyati Islamiyati, "Kritik Filsafat Hukum Positivisme Sebagai Upaya Mewujudkan Hukum Yang Berkeadilan," *Law, Development and Justice Review* 1, no. 1 (November 9, 2018): 82–96, <https://doi.org/10.14710/ldjr.v1i1.3574>.

²⁴ Muhammad Arif Setiawan and Mahrus Ali, *Kapita Selekta Teori Hukum* (yogyakarta: bintang Semesta Media, 2021). Hlm. 59-63

the law can function fairly and humanely in the face of the challenges of the times.

3.3. The Relevance of Pure Legal Theory in Contemporary Legal Development.

Hans Kelsen first proposed Pure Legal Theory, based on the concept that law should be viewed as an independent system of rules, separate from external elements such as morals, politics, and sociology.²⁵ The basis of this theory is that law operates autonomously through binding rules and is normative, so that the enforcement and understanding of law should not be influenced by moral values or political factors that are considered subjective. Kelsen presents the concept of law that is independent of specific ideologies or ethical principles, yet remains a strong norm that objectively regulates social relations.²⁶

The basis of this theory is that law operates autonomously through binding rules and is normative, so that the enforcement and understanding of law should not be influenced by moral values or political factors that are considered subjective. Kelsen presents the concept of law that is independent of specific ideologies or ethical principles, yet remains a strong norm that objectively regulates social relations.

The relevance of Pure Legal Theory has begun to experience serious challenges in the face of social dynamics and globalisation that drive the development of contemporary law in a more complex direction. In the context of administrative law, the principles of Pure Law Theory are considered helpful for maintaining the independence and consistency of state regulations related to bureaucratic and public affairs.²⁷

²⁵ Nur Talita Prapta Putri and Ananda Aulia, "Penerapan Teori Positivisme Hans Kelsen Di Indonesia," *Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 1 (2024): 1–25, <https://journal.forikami.com/index.php/dassollen/article/download/543/285/3811>.

²⁶ Helmi Kasim, "Mendialogkan Hakikat Hukum Dan Keadilan Pada Berbagai Aliran Pemikiran Hukum Dalam Novel Les Miserables," *Jurnal Konstitusi* 17, no. 4 (2020): 753–76, <https://doi.org/10.31078/jk1743>.

²⁷ Yusri Munaf, *Hukum Administrasi Negara: Pengantar Hukum Administrasi Negara* (Pekanbaru: Marpoyan Tujuh, 2016).

However, the application of law that is too rigid and detached from social values often encounters limitations when dealing with modern issues that require consideration using external values, such as human rights, environmental sustainability, and advances in digital technology. On human rights, a purely legal or socially detached approach tends to ignore the substantive rights and justice required for the protection of vulnerable groups and minorities. While the law must maintain its objectivity, purely objective interpretations of the law are often insufficiently responsive to the rapidly evolving demands of substantive justice in the era of globalisation.

In global developments, contemporary legal issues increasingly demand the flexibility of legal interpretation that accommodates human values and universal justice.²⁸ Cases involving transnational interests and transnational problems, such as climate change, cybercrime, and migration, challenge Pure Legal Theory in terms of law's ability to provide comprehensive answers to these issues. A legal approach that overlooks moral or social aspects may hinder international efforts to achieve effective and equitable legal solutions. For example, global environmental issues facing many countries require regulations and policies based on justice and long-term sustainability, values that cannot be fully contained within a purely legal framework that focuses solely on static norms, but must be dynamic to align with existing moral norms.

In the modern era, it seems that this theory is advantageous in maintaining legal neutrality, but at the same time, shows shortcomings when faced with legal challenges that require a more contextual and interdisciplinary approach. While this theory is still relevant as an approach to ensuring legal certainty, the complexity of contemporary legal issues necessitates an openness to more dynamic complementary approaches. Legal approaches that combine objectivity with sensitivity to moral and social values are expected to expand the relevance of Pure Law Theory to be more adaptive and responsive to the needs of modern society. The relevance of Pure Legal Theory in the development of contemporary law is partial and requires conceptual

²⁸ Fitriani and Pasundan, "Pengaruh The Pure Theory Of Law Dalam Perkembangan Hukum Positivisme Di Indonesia."

adjustments to play a more optimal role in answering legal challenges in the global era.

3.4. Evaluation of Pure Legal Theory (*Grundnorm*) in the Context of Contemporary Legal Development

The Pure Law Theory (*Grundnorm*) was developed by Hans Kelsen has become one of the important cornerstones in legal positivism, especially in the first half of the 20th century.²⁹ However, in the context of contemporary legal development, this theory needs to be critically evaluated as it faces new challenges that demand a more dynamic and integrative approach to law. The strengths of Pure Law Theory remain relevant in some aspects, but its weaknesses are increasingly evident along with the complexities faced by the legal system in the era of globalisation, technology, and rapid social change.

One of the strengths of Pure Law Theory that remains relevant is its structural clarity. With the concept of the *Grundnorm* as the basic norm that provides legitimacy for other norms below it, the theory helps explain how the legal system functions hierarchically.³⁰ In the context of international law, for example, this concept remains helpful in understanding the validity of international treaties and the relationship between national and international law. Amid globalisation, many legal systems must operate within a broader framework, where international norms are often seen as the supreme norm underpinning domestic law. Kelsen's theory provides a way to organise this relationship in a consistent system, where national laws can be interpreted in terms of global norms.

However, one of the fundamental weaknesses of Pure Legal Theory in the contemporary context is its inability to respond to the rapid and dynamic

²⁹ Darmini Roza and Gokma Toni Parlindungan S, "Teori Positivisme Hans Kelsen Mempengaruhi Perkembangan Hukum Di Indonesia," *Lex Jurnalica Volume* 18, no. 1 (2021): 20–26, <https://doi.org/10.47007/lj.v18i1.4056>.

³⁰ Dani Pinasang, "Falsafah Pancasila Sebagai Norma Dasar (*Grundnorm*) Dalam Rangka Pengembangan Sistem Hukum Nasional," *Jurnal Hukum Unsrat* 20, no. 3 (2020): 1–10, <https://repo.unsrat.ac.id/266/>.

nature of legal change.³¹ Today, law no longer functions as a static regulatory instrument, but as a tool to respond to complex global challenges, such as climate change, digital rights, and human rights. Kelsen's theory, which overemphasises formal legality and the separation of law from moral and political values, fails to make room for the discussion of substantive justice that is now increasingly needed. In modern legal issues such as social justice or the protection of minority rights, a pure approach that separates law from morality is often considered insufficient, as laws that only refer to formal norms may be unjust in practice.

This theory of law has limitations in explaining fundamental changes in the legal system, especially when facing drastic changes in the political structure of a country. This theory provides the foundation for the validity of all legal norms under it, but when radical political changes occur, such as revolutions, constitutional changes and regime changes. The *Grundnorm* faces challenges in explaining the legitimacy of the resulting new law. For example, when a totalitarian regime collapses and is replaced by a new democratic state, the basic norms underlying the old legal system must be replaced with new norms that are in line with democratic principles. However, in this case, Kelsen's theory of law struggles to provide a sufficient explanation of how this basic norm can legitimately change in accordance with what underlies society's acceptance of the new norm. The theory tends to be static and holds that the basic norm is fixed as long as the legal system continues to exist.

Changes in the legal system are often not only caused by formal changes in the legal order, but also involve complex political, social and moral dynamics.³² Regime change or constitutional change often occurs due to societal pressure for a system that is more in line with aspirations and values, so that the old law is no longer considered appropriate. This condition reflects that law is not fully autonomous, but is influenced by

³¹ Sujono, "Perkembangan Teori Hukum Murni Di Indonesia."

³² Nasarudin Umar, "Konsep Hukum Modern: Suatu Perspektif Keindonesiaan, Integrasi Sistem Hukum Agama Dan Sistem Hukum Nasional," *Walisono: Jurnal Penelitian Sosial Keagamaan* 22, no. 1 (2014): 157–80, <https://doi.org/10.21580/ws.22.1.263>.

the collective desire to achieve justice and better welfare. In this context, Kelsen's legal theory is considered less flexible, as it does not accommodate external factors such as community aspirations that become the driving force for fundamental changes in legal norms.

In the contemporary legal world, the rigid normative approach of Pure Legal Theory is increasingly difficult to apply. Law in the modern era must not only regulate the behaviour of individuals and states, but must also respond to fast-changing global interactions. Phenomena such as the internet, cyber law, and global regulation of multinational corporations create a more dynamic legal environment. Law in this context cannot be fully separated from the social, political, and moral considerations that develop in society. Modern social dynamics show that law is often influenced by multidimensional issues, where formal legality is not enough to handle the complexity of existing problems. For example, regulations related to data privacy and cybersecurity require a more holistic approach that includes ethical, political and social considerations. Privacy issues are not only about complying with the rule of law, but also about how one's personal data is used and potentially misused, which has a major impact on individual rights and public trust in institutions.

Not only that, politics such as national security and international relations also influence privacy and cybersecurity policies, making it an issue that transcends the realm of pure law. Kelsen's legal theory, which focuses on the internal normative system of law and separates law from social reality, tends to ignore these external dimensions. It does not provide sufficient instruments to understand how social, political and moral influences shape and change the legal system. As a result, the Kelsenian approach to understanding law is considered less capable of explaining the complex relationship between legal norms and dynamic social realities.

In the field of law and human rights, Pure Legal Theory is often unable to provide adequate answers to legalised moral violations. This limitation becomes particularly evident in cases where formal law is used to oppress injustice, such as apartheid in South Africa, which was legally legitimised

despite being in stark contrast to universal moral values and justice. In the apartheid system, formal law supported racial segregation and systematic discrimination, resulting in widespread injustice and human rights violations. While this legal system was legally valid based on the norms prevailing in South Africa at the time, it was clearly morally unjust. Cases like this underscore the fundamental flaw of Pure Legal Theory, where too much focus on formal legality without considering substantive justice can create space for legal systems that support injustice.

However, despite its weaknesses, Pure Legal Theory still contributed to the development of modern legal positivism. Kelsen's theoretical framework helped shape the understanding of legal autonomy and the role of legal norms in organising society. In situations where legal stability is needed, such as in countries undergoing democratic transition, Kelsen's approach can help establish a coherent legal system and safeguard the law from overly strong political interference. However, an evaluation of this theory in a contemporary context shows that law cannot be completely separated from the ever-changing social, political and moral aspects, and therefore the theory requires further development in order to remain relevant to the challenges of the times.

Overall, although Pure Legal Theory offers a clear, structured and coherent analytical framework, especially in understanding the hierarchical relationship between legal norms, it faces serious challenges in the context of increasingly dynamic contemporary legal developments. One of the main advantages of Hans Kelsen's approach is the theory's ability to separate law from the influence of moral, political and social values, so that law can be understood scientifically and neutrally.³³ However, precisely because of this separation, the theory has become less relevant in addressing the more complex and multidimensional problems faced by modern society.

In the current era, issues such as substantive justice, human rights protection, and the regulation of new phenomena, including climate change, cyber law,

³³ Asep Bambang Hermanto, "Ajaran Positivisme Hukum Di Indonesia: Kritik Dan Alternatif Solusinya," *Selisik* 2, no. 4 (2016): 108–21, <https://doi.org/10.35814/selisik.v2i2.650>.

and economic globalization, demand a more responsive and flexible approach to law, which a rigid normative framework cannot fully address. Therefore, amidst the complex development of modern law, Pure Legal Theory must be re-evaluated. While its theoretical framework remains relevant in certain situations, such as maintaining order in a stable legal system, this approach requires integration with other perspectives beyond pure legal norms to better address the challenges of the times. Modern law can no longer be understood in isolation from the social, political and moral contexts that influenced its creation.

4. Conclusion

The Pure Law Theory formulated by Hans Kelsen is an essential foundation in the discipline of law, emphasising that law should be understood as an autonomous normative system, independent of the influence of moral, social and political values. Kelsen sought to keep the law objective, focusing on the formal validity of systematically organising social relations and free from external subjectivity. This approach served to create legal certainty and consistency across systems that embraced positivism, and proved helpful in neutrally enforcing rules. However, in practice, the concept of law being entirely separate from morality often faces limitations, especially when the law must be applied to issues such as human rights, social justice, or the environment, which cannot be separated from moral and social values. Formal validity alone is insufficient to guarantee the substantive justice expected by modern society, so the gap between objective legal theory and the demand for substantive justice is often a problem in contemporary legal practice.

In the midst of changing social dynamics, such as globalisation, the development of digital technology, and the environmental crisis, Pure Legal Theory also faces major challenges due to its rigid and limited nature in responding to the complexity of cross-border issues. While the theory remains important as a foundation that ensures legal objectivity, its inability to embrace social dynamics suggests that law needs a more flexible and

adaptive approach. Thus, while the relevance of Pure Legal Theory as a conceptual framework in maintaining legal consistency cannot be ignored, it requires additional perspectives that are more responsive and integrative to deal with more complex legal realities in this modern era. A legal approach that considers aspects of morality, human values, and sustainability will help complete this framework, allowing the law to be more responsive to the broader needs of justice as well as adjusting to accelerating social developments.

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